HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

First Appeal No. 899 of 2001
(Old No. 252/1982)

Date of Decision : 27th February, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date Initial of Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal No. 899 of 2001
(Old No. 252/1982)

The Collector, Dehradun … Appellant

Versus

Bhav Harihar Lal
S/o Sri Darshan Lal
R/o Mukand Bhavan
Tilak Road, Dehradun … Respondent

Sri R.C. Arya, learned Standing Counsel for the Appellant
Sri M.C. Pande, learned counsel for the respondent.

Hon'ble J.C.S. Rawat, J.

This is an appeal against the judgment and order of Sri D.L. Agarwal, the then District Judge, Dehradun passed in five references, namely L.A. case Nos. 11 of 1980, 12 of 1980, 13 of 1980, 14 of 1980 and 15 of 1980 under Section 18 of the Land Acquisition Act filed on behalf of the appellant by which the learned District Judge enhanced the compensation from Rs. 2,35,742.32 to Rs. 3,28,900/- with interest @ 6% p.a. from 07.05.1977. It was further directed by the learned District Judge that the amount awarded in the said order, parties will get the amount in proportion of their share specified in the order and they will also be entitled to the proportionate cost on the amount exceeding the amount of award.

Feeling aggrieved by the said award, the present appeal has been preferred.

The brief facts for the disposal of this appeal are that a land acquired for the purpose of acquisition was 4.237 acres for the construction of the houses. The said land was situated in village Kanwali, District Dehradun. It comprises of Khasra Nos. 66, 67, 68, 69 and 70. A notification u/s 4 of the Land

Acquisition Act was issued on 11.12.1976 and notification u/s 6 was published on 29.01.1977. Possession over the said land was taken on 07.05.1977. Thereafter, the Land Acquisition Officer determined the market value of the disputed land as Rs. 2,35,747.32 which is to be paid to the owners. The Land Acquisition Officer assessed the value of the land @ Rs. 72,860/- per acres. The deduction of 25% was made for being the land as a huge area. The Land Acquisition Officer also deducted @ 15% on account of depreciation in the land which are to be filled up for the construction. The amount of 15% solatium on the said amount and interest from 07.05.1977 to 05.08.1978 was also granted to the claimants.

Feeling aggrieved by the said judgment and order, an application u/s 18 of the Land Acquisition Act was preferred before the Collector which was sent to the District Judge.

In the Reference Petition, it was prayed that the amount which was awarded by the Land Acquisition Officer is inadequate and the learned Land Acquisition Officer has not calculated the said amount according to the correct market value. The State also filed the written statement before the District Judge and stated that the learned Land Acquisition Officer has taken all the relevant exemplars into consideration before calculating the market value of the property. It was further submitted that the land acquired was not plain and the State will have to bear a lot of amount for the development of the said land. It was further alleged that the entire land could not be used for the purposes of building residences specially for the provisions of road, lanes, by-lanes etc. had to be taken into account.

Learned District Judge framed the necessary issues and came to the conclusion that the land which has been acquired is within the municipal limit of Dehradun and it adjoins residential localities including the posh locality of Yamuna Colony inhabited by highly place Engineers and that it is

suitable for building residences. It was further held that there is some differences in the level of this land and that too at some places and that does not show that the land requires huge financial investment for leveling it. It was further held that the averment made in the written statement that there is a river flowing through this land was found incorrect. It was further held that the rainy waters also goes through the land which is natural phenomenon in Dehradun. It was also held that there is slight slope in the said land and it was held that the land in question cannot be said that it is totally useless and the land cannot be used for the purposes of residential purposes. Feeling aggrieved by the said judgment and order of the District Judge, the present appeal has been preferred.

Learned counsel for the appellant contended that the claimants had alleged before the learned Land Acquisition Officer that the value of the said land is only Rs. 75,000/- per acre and now they could not raise this point before learned lower court. It was further contended that they are barred by the principle of estoppel. Learned counsel for the respondents contended that the claimant had never pleaded that the value of the land was only Rs. 75,000/- per acre. What the claimant pleaded before the learned Special Land Acquisition Officer was that it was more than Rs. 75,000/- per acre. The perusal of the record reveals that the respondent had pleaded before the court that the fair market value of the land acquired was much more than Rs. 75,000/- per acre. Thus it cannot be said that they have only stated that the market value of the land was only Rs. 75,000/- per acre. Dr. Jai Harihar Lal PW1 appeared before the court and had stated before the Court below that the market value of the said land was Rs. 75,000/- without any deduction made by the department. Perusal of the statement as well as pleadings reveal that the claimants had not made any statement or had not pleaded that the market value of the said property was restricted only upto Rs. 75,000/-. Therefore, I

do not find any substance in the contention of the arguments of the learned Standing Counsel.

Learned Standing Counsel further contended that the court below erred in not calculating the compensation on the basis of the exemplars plot Nos. 110 and 111 of the village Kanwali (Ex. 2 and Ex. 7). The said land was situated in close proximity to the land in question. Learned counsel for the appellant refuted the contention. Perusal of the record reveals that both the parties have placed reliance on one exemplar, i.e., Ex. A-1 = Ex.6 relating to the sale of 206 sq. meters of land situated in village Kanwali comprising of Khasara No. 111 executed by Sri Pramod Kumar and Smt. Dhano Devi in favour of Sri R.P. Dhasmana. Accordingly, the market value comes approximately Rs. 1,15,000/- per acre. Ex.-2 sale deed which was filed by the appellant pertains to 241.55 Sq.meters of land which was sold at the consideration of Rs. 5780/-. The market value according to the sale deed comes to 1,15,000/-. The next exemplar which was relied upon by the appellant is Ex.-7 which involves sale of 269.40 sq. meters for consideration of Rs. 6440/- which again reveals that the market value is approximately 1,15,000/- per acre. These exemplars pertain to close proximity to the land in question. There is also the evidence of Dr. Jai Harihar PW1 that the land to khasra Nos. 110 and 111 was far away from the land acquired in this case. This statement is also unrebutted.

In view of the above exemplars, the market value of the land is 1,15,000/- per acre. I do not find any reason to depart with the findings recorded by the learned District Judge. The learned District Judge had rightly relied upon the exemplars sale deed on the basis of which compensation had been enhanced. They are approximate in the point of time and location of the land. The learned District Judge after keeping all the consideration delivered the market value of the land in question at Rs. 1,00,000/- per acre. The total valuation worked

out Rs. 4,23,700/-. Thus I am completely in agreement with the findings recorded by the learned District Judge and I do not find any substance in this argument.

The learned District Judge after calculating Rs. 4,23,700/- had given deduction in different cost he had given 25% deduction for being large area of the said land. The learned District Judge has deducted @ 10% for being land uneven and he has deducted the depreciation over the area of this land and 15% solatium amounting to Rs. 42,000/- has been awarded and the learned District Judge calculated the compensation Rs. 3,28,900/- and the claimant was found entitled to the interest of 6% p.a..

In view of the above, the appeal is devoid of merit and is liable to be dismissed and the same is accordingly dismissed.

Cost easy.

(J.C.S. RAWAT, J.)

27th February, 2006
Shiv